

P-421/GR-83-600DENYING INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Petition of Northwestern
Bell Telephone Company, Minneapolis,
Minnesota for Authority to Change its
Schedule of Telephone Rates for Customers
Within the State of Minnesota

ISSUE DATE: July 10, 1989

DOCKET NO. P-421/GR-83-600

ORDER DENYING INTERVENOR
COMPENSATION

PROCEDURAL HISTORY

Evan J. Henry, a semi-retired Certified Public Accountant, intervened in the above captioned rate case which was filed on September 29, 1983.

On May 3, 1984, Minn. Laws, Chapter 611 (Minn. Stat. § 237.075, subd. 10) which governs intervenor compensation for participation in a telephone company's general rate case became effective. This law applies to expenses incurred after May 3, 1984.

On July 27, 1984, the Minnesota Public Utilities Commission (the Commission) issued its Findings of Fact, Conclusions of Law, and Order in this proceeding. On September 26, 1984, the Commission issued its Order After Reconsideration and Rehearing.

On September 28, 1984, Mr. Henry submitted a request for reimbursement of \$12,424.28 for costs for participating in this proceeding that were incurred prior to May 4, 1984, and for reimbursement of \$6,551.80 for costs of participating in this proceeding that were incurred after May 4, 1984. Five other intervenors also requested compensation.

On November 13, 1984, the Commission issued its Order Denying Reimbursement of Intervention Costs which denied compensation to all six intervenors.

On December 5, 1984, Mr. Henry submitted a petition for reconsideration of the Commission's November 13, 1984 Order. Two other intervenors also requested reconsideration. These petitions were denied in a Commission Order of January 10, 1985.

In February 1985, Mr. Henry and two other intervenors appealed the Commission's November 13,

1984 and January 10, 1985 Orders to the Minnesota Court Appeals. On October 1, 1985, the Court of Appeals reversed the Commission's denial of intervenor compensation to all three intervenors and remanded the matter to the Commission. The Court affirmed the portion of the Commission's Order denying Mr. Henry reimbursement prior to May 4, 1984. In the Matter of the Application of Northwestern Bell Telephone Company, 374 N.W.2d 758 (Minn. App. 1985).

On May 9, 1986, the Minnesota Supreme Court reversed the Court of Appeals with respect to the other two intervenors, but affirmed the Court of Appeals with regard to Mr. Henry's request for intervenor compensation, remanding it to the Commission for reconsideration. Application of Northwestern Bell Telephone Company, 386 N.W.2d 723 (Minn. 1986).

On April 2, 1987, the Commission issued its Order After Investigation and Vacating July 27, 1984 Order in Docket No.

P-421/GR-83-600 in In the Matter of the Minnesota Public Utilities Commission's Initiation of a Summary Investigation of the Nature and Extent of Contacts Between Public Utilities and Telephone Companies and Former Minnesota Public Utilities Commissioners, Docket No. U-999/CI-86-177. In that Order the Commission voided its July 27, 1984 Order in this matter and reopened this case for further deliberation and the issuance of a new decision and Order.

On April 3, 1987, the Commission issued its Order After Redeliberation in this matter.

On July 2, 1987, Northwestern Bell Telephone Company (NWB or the Company) appealed the Commission's Orders in Docket Nos. U-999/CI-86-177 and P-421/GR-83-600 to the Minnesota Court of Appeals.

On December 29, 1987, the Court of Appeals filed a decision on the Company's appeals (C7-87-1296 and C9-87-1297). NWB appealed this decision to the Minnesota Supreme Court.

The Minnesota Supreme Court denied further review of the Company's appeals in Docket Nos. U-999/CI-86-177 and P-421/GR-83-600 on March 18, 1988 and denied the Company's petition for reconsideration on April 4, 1988.

On May 12, 1989, the Commission solicited comments regarding Mr. Henry's request for intervenor compensation.

On June 6, 1989, Mr. Henry filed with the Commission a Motion and Notice of Motion to Amend Evan J. Henry's Petition for Intervenor Compensation and to Allow Such Compensation and Brief in Support of Motions. Mr. Henry requested \$15,263.68 in compensation.

On that same date, NWB filed comments on Mr. Henry's petition, recommending that the Commission deny Mr. Henry's request.

The Commission met on June 15, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must decide whether Mr. Henry qualifies for intervenor compensation under Minn. Stat. § 237.075, subd. 10. If so, the Commission must determine the amount of compensation to be awarded.

The Commission is guided by Minn. Stat. § 237.075, subd. 10 which states:

The commission may order a telephone company to pay all or a portion of a party's intervention costs not to exceed \$20,000 per intervention in any general rate case when the commission finds that the intervenor has materially assisted the commission's deliberation and the intervenor has insufficient financial resources to afford the costs of intervention.

The Commission notes that Mr. Henry submitted no financial need information in his September 28, 1984 petition for compensation. In response to a Commission staff request for that information, Mr. Henry submitted an affidavit on October 2, 1984. In his affidavit, Mr. Henry stated that "...it would have been beyond my financial ability to have hired a professional with my expertise and an attorney to have performed the services I performed for the Commission in the above matter." He submitted no financial need information in his June 6, 1989 filings.

In Mr. Henry's brief to the Minnesota Court of Appeals, he states, "Appellant's out of pocket costs have been affordable to appellant and his expenditure of professional time have naturally been affordable - otherwise he would not have become a party in the first place." Henry Brief at p.2.

The Commission finds that Mr. Henry does not meet the statutory requirement of insufficient financial resources to afford the costs of intervention. By his own admission, he could afford the costs of participating in this rate case. Furthermore, his position that he had inadequate funds to participate as fully as he would have wished and is, therefore, entitled to compensation for the work he did do is a misinterpretation of the statute. The statute provides for compensation for costs actually incurred by an intervenor with insufficient resources who materially assists the Commission in its deliberations.

Another factor militating against an award here is that Mr. Henry began his participation in this rate case prior to the passage of Minn. Stat. § 237.075, subd. 10 and, therefore, could not have had a reasonable expectation of compensation for his participation. See, Order Denying Reimbursement of Intervenor Costs, November 13, 1984.

The Commission need not reach the issues of whether Mr. Henry materially assisted the

Commission in its deliberations or which of his costs are compensable.

ORDER

1. Evan J. Henry's petition for intervenor compensation is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)